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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**JAMES AMONETTE**, an  
individual,

Plaintiff,

v.

**WELLS FARGO BANK, N.A.**,

Defendant.

Case No.: '15CV1718 AJB RBB

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF FOR  
VIOLATIONS OF:**

- 1. THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, ET SEQ.;**
- 2. THE CALIFORNIA IDENTITY THEFT LAW, CAL. CIV. CODE § 1798.93, ET SEQ.;**
- 3. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT, CAL. CIV. CODE § 1788, ET SEQ.**

**JURY TRIAL DEMANDED**

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## INTRODUCTION

1. Plaintiff, JAMES AMONETTE, (“Plaintiff”) is a victim of identity theft. On the night of May 14, 2015, while Plaintiff’s truck was parked in the driveway of his personal residence, an unknown suspect burglarized his vehicle. Plaintiff discovered the burglary the next day and immediately reported the crime to law enforcement at approximately 8:50 a.m. on May 15, 2015. The San Diego County Sheriff’s Department dispatched Detective Michael Lane to investigate. Detective Lane observed Plaintiff’s vehicle as having been “ransacked.” [See Police Report, Case No. 15124452; Exhibit 1]. The thief stole Plaintiff’s wallet, driver’s license, social security card and multiple credit and debit cards. [*Id.*]
2. Plaintiff reported the burglary to his credit card companies and his bank, Defendant, WELLS FARGO BANK, N.A., (“Wells Fargo” or “Defendant”). When Plaintiff called to cancel his credit cards and notify Defendant of the burglary, he discovered the thief made fraudulent purchases on all five (5) of the stolen credit and debit cards, including both of his Wells Fargo Visa debit cards ending in -4315 and -6559. The thief made approximately 15 fraudulent purchases at Viejas Casino and the surrounding area.
3. Despite Plaintiff having reported to Defendant the burglary, identity theft, and subsequent fraudulent purchases, Defendant allowed the burglar to enter a Wells Fargo branch in Las Vegas, Nevada and withdraw funds using a forged check, a stolen and *deactivated* debit card, and Plaintiff’s stolen driver’s license.
4. Plaintiff continually disputed the fraudulent charges and cash withdrawals, both orally and in writing, stating he is the victim of identity theft. Knowing Plaintiff was the victim of identity theft, Defendant sent Plaintiff’s accounts to collections and repeatedly contacted Plaintiff to collect a debt that Defendant’s own letters state is the result of “forgery.”

- 1 5. As alleged herein, Defendant has repeatedly refused to investigate Plaintiff's  
2 claims of identity theft and has instead repeatedly attempted to collect the  
3 fraudulent debt in violation of: (i) The Telephone Consumer Protection Act,  
4 ("TCPA") 47 U.S.C. § 227 *et seq.*; (ii) The Rosenthal Fair Debt Collection  
5 Practices Act, ("RFDCPA") Cal. Civ. Code § 1788, *et seq.*; and (iii) The  
6 California Identity Theft Law, ("CITL") Cal. Civ. Code § 1798.93, *et seq.*
- 7 6. Plaintiff alleges the following upon personal knowledge as to Plaintiff's own  
8 acts and experiences, and, as to all other matters, upon information and belief,  
9 including investigation conducted by Plaintiff's attorney.
- 10 7. While many violations are described below with specificity, this Complaint  
11 alleges violations of the statutes cited in their entirety.
- 12 8. Unless otherwise stated, Plaintiff alleges any violations by Defendant were  
13 knowing and intentional, and Defendant did not maintain procedures  
14 reasonably adapted to avoid such violations.
- 15 9. Unless otherwise indicated, any Defendant's name in this Complaint includes  
16 all agents, employees, officers, members, directors, heirs, successors, assigns,  
17 principals, trustees, sureties, subrogees, representatives, and insurers of  
18 Defendant.
- 19 10. Unless otherwise stated, all the conduct engaged in by Defendant occurred in  
20 the State of California.

## 21 PARTIES

- 22 11. Plaintiff, JAMES AMONETTE, ("Plaintiff") is a natural person who resides  
23 in the City of La Mesa, County of San Diego, State of California, from whom  
24 a debt collector sought to collect a consumer debt, which was due and owing,  
25 or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is  
26 defined by Cal. Civ. Code § 1788.2(h).
- 27 12. In addition, Plaintiff is a "victim of identity theft" as that term is defined by  
28 Cal. Civ. Code § 1798.92(d) and is a "person" as that term is defined by

1 47 U.S.C. § 153(39).

2 13. Defendant, WELLS FARGO BANK, N.A., (“Wells Fargo” or “Defendant”) is  
3 a financial institution, organized and existing under the laws of the State of  
4 California, or is a business organization, from presently unknown, doing  
5 business in the State of California and the County of San Diego.

6 14. Defendant, regularly and in the ordinary course of business, engages in “debt  
7 collection” as that term is defined by Cal. Civ. Code § 1788.2(b) and is  
8 therefore a “debt collector” as that term is defined by Cal. Civ. Code §  
9 1788.2(c).

10 15. This case involves money, property, or their equivalent, due or owing or  
11 alleged to be due or owing, from a natural person by reason of a consumer  
12 credit transaction. As such, this action arises out of a “consumer debt” and  
13 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

14 16. Defendant purports to have a claim for money or an interest in property in  
15 connection with a transaction procured through identity theft and is therefore a  
16 “claimant” as that term is defined by Cal. Civ. Code § 1798.92(a).

17 17. In addition Defendant is a “person” as that term is defined by 47 U.S.C. §  
18 153(39).

### 19 JURISDICTION AND VENUE

20 18. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 47 U.S.C. §  
21 227(b), and 28 U.S.C. § 1367 for supplemental state law claims.

22 19. The Court has personal jurisdiction over Defendant as Defendant conducts  
23 business within the State of California and has purposefully availed itself of  
24 the laws and markets of the State of California and this district.

25 20. Venue is proper in the United States District Court, Southern District of  
26 California pursuant to 28 U.S.C. § 1391 as (i) Plaintiff resides in the County  
27 of San Diego, State of California, which is within this judicial district; and (ii)  
28 the conduct complained of herein occurred within this judicial district.

**FACTUAL ALLEGATIONS**

21. At all times relevant, Plaintiff was an individual residing within the State of California.
22. Defendant sent all correspondence to Plaintiff at an address located within the State of California.
23. On the night of May 14, 2015, after Plaintiff parked his vehicle in the driveway of his personal residence, an unknown suspect burglarized Plaintiff's vehicle. Plaintiff discovered the burglary the next morning at 8:50 a.m. on May 15, 2015 and immediately reported the crime to the San Diego County Sheriff's Department, who initialed an investigation and filed a police report (Case No. 15124452).
24. The San Diego County Sheriff's Department dispatched Detective Michael Lane to investigate. Detective Lane reported a thief "ransacked" Plaintiff's vehicle and stole his wallet, driver's license, social security card and five (5) credit and debit cards. [See Police Report, Case No. 15124452; Exhibit 1].
25. On the morning of May 15, 2015, Plaintiff reported the burglary to his credit card companies and his bank, Defendant, Wells Fargo. When Plaintiff called to notify Defendant of the burglary, Defendant notified Plaintiff that the thief made fraudulent purchases on both of his Wells Fargo Visa debit cards ending in -4315 and -6559.
26. The Police Report summarizes the fraudulent purchases on the Wells Fargo debit cards as follows: "The Wells Fargo Visa Debit Card (Last four -4315) was used at an El Cajon Circle K #094 for \$62.44 worth of gas. The Wells Fargo Visa Debit Card (Last four -6559) was used to make an \$880 and \$840 withdraws at Viejas [Casino], and four \$218.99 purchases (total being \$875.96) at Viejas [Casino]." [See Exhibit 1 at p. 4].
27. One of the debit cards is associated with Plaintiff's Wells Fargo bank account ending in -6940 and the other debit card is associated with Plaintiff's bank

1 account ending in -1470. When Plaintiff notified Defendant of the burglary on  
2 May 15, 2015, he initiated a fraud and identity theft claim with respect to both  
3 the debit cards and all of his bank accounts maintained with Defendant,  
4 including, but not limited to, his banks accounts ending in -6940 and -1470.

5 28. At this time Defendant informed Plaintiff that it would deactivate both cards  
6 and place a fraud alert on both bank accounts.

7 29. On or about July 16, 2015, Defendant sent Plaintiff a letter confirming the  
8 transactions associated with the account ending in -1470 were fraudulent and  
9 unauthorized; as such, all charges, fees, and interest were waived. [See July  
10 16, 2015 Letter; Exhibit 2].

11 30. The outcome for the account ending in -6940 was quite different. On May 27,  
12 2015 at 4:03 p.m., the thief who burglarized Plaintiff's vehicle and stole his  
13 identity deposited a forged check (the "Forged Check" or the "debt") for  
14 \$950.00 at a Wells Fargo Bank branch located at 3433 South Maryland  
15 Parkway, Las Vegas, Nevada 89169.

16 31. Defendant's bank teller allowed the thief to deposit the forged check with  
17 Plaintiff's stolen driver's license and the *deactivated* and stolen debit card  
18 associated with Plaintiff's bank account ending in -6940. [See Forged Check;  
19 Exhibit 3]. The teller then allowed the thief to withdrawal \$830.00 in cash of  
20 the total \$950.00 of the forged check. Plaintiff alleges on information and  
21 belief that the teller allowed the thief to make the withdrawal notwithstanding  
22 the fraud alert Defendant placed on the account ending in -6940; and further,  
23 that the teller did not require the thief enter the personal identification number  
24 or "PIN" associated with the debit card.

25 32. Being that the check was forged it was returned unpaid and Defendant mailed  
26 Plaintiff a letter on May 29, 2015 attempting to collect the balance on the  
27 forged check of \$950.00. [See May 29, 2015 Debt Collection Letter; Exhibit  
28 4]. The letter also states Defendant deducted the forged check from Plaintiff's

1 account ending in -6940, causing the account to become overdrawn, and  
2 directed Plaintiff to transfer funds to “bring [the] account to a positive  
3 balance.” [*Id.*].

4 33. Ironically, Defendant’s May 29, 2015 Letter even admits the check was a  
5 fraud stating, “your account has been charged for the following paper items(s)  
6 returned unpaid: **Forgery** [Amount:] 950.00.”

7 34. At the time Defendant sent the May 29, 2015 letter, Plaintiff’s account was  
8 already “overdrawn” dictating the negative balance referenced therein was  
9 already past due, in default, and “due and owing” or alleged to be “due and  
10 owing” as those terms are defined by Cal. Civ. Code § 1788.2(d) before the  
11 letter was sent to Plaintiff.

12 35. Plaintiff did not make the May 29, 2015 deposit or withdrawal, nor did he  
13 authorize any such deposit or withdrawal to be made on his behalf. As  
14 Defendant’s letter states, the withdrawal and deposit resulted from a forged  
15 check. As such, Plaintiff is not obligated to pay any such amount alleged to be  
16 due and owing from said transactions as they are the result of a forged check  
17 and identity theft. However, Defendant has demanded payment upon the  
18 alleged debt knowing it was the result of identity theft.

19 36. Through this conduct, Defendant violated: (i) 15 U.S.C. § 1692e by making  
20 false, deceptive, and misleading representations in connection with the  
21 collection of a debt; (ii) 15 U.S.C. § 1692e(2) by making false representations  
22 regarding the character, amount, or legal status of a debt; (iii) 15 U.S.C. §  
23 1692e(10) by using false representations or deceptive means to collect or  
24 attempt to collect a debt; (iv) and 15 U.S.C. § 1692f by using unfair or  
25 unconscionable means to collect or attempt to collect a debt. These sections  
26 are incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus,  
27 Defendant also violated Cal. Civ. Code § 1788.17.

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- 1 37. On June 23, 2015 at 8:11 a.m. and at 8:45 a.m., Defendant contacted Plaintiff  
2 by telephone using the telephone number (877) 647-8551. During the 8:45  
3 a.m. call, Defendant's employee and/or agent stated that he was a debt  
4 collector attempting to collect the debt resulting from the Forged Check,  
5 resulting overdraft, and past due balance. During this call Plaintiff informed  
6 Defendant's debt collector that: (i) Plaintiff was the victim of identity theft  
7 with respect to the alleged debt; (ii) that Plaintiff was not responsible for the  
8 alleged debt; and (iii) that Plaintiff refused to pay the alleged debt.
- 9 38. Through this conduct, Defendant violated: (i) 15 U.S.C. § 1692e by making  
10 false, deceptive, and misleading representations in connection with the  
11 collection of a debt; (ii) 15 U.S.C. § 1692e(2) by making false representations  
12 regarding the character, amount or legal status of a debt; (iii) 15 U.S.C. §  
13 1692e(10) by using false representations or deceptive means to collect or  
14 attempt to collect a debt; (iv) and 15 U.S.C. § 1692f by using unfair or  
15 unconscionable means to collect or attempt to collect a debt. These sections  
16 are incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus,  
17 Defendant also violated Cal. Civ. Code § 1788.17.
- 18 39. During the 8:45 a.m. June 23, 2015 phone call, Plaintiff orally claimed and  
19 reported to Defendant he was the victim of identity theft. Defendant did not  
20 advise Plaintiff orally or in writing that Plaintiff's identity theft claim must be  
21 made in writing.
- 22 40. Through this conduct, Defendant violated Cal. Civ. Code § 1788.18(c) by  
23 failing to notify plaintiff that his identity theft claim must be made in writing.
- 24 41. On June 24, 2015 at 10:23 a.m., Defendant again contacted Plaintiff by  
25 telephone in an attempt to collect upon the Forged Check and resulting debt  
26 using the same number, (877) 647-8551. Responding to the missed call,  
27 Plaintiff contacted Defendant who again attempted to collect upon the debt  
28 resulting from the forged check, subsequent overdraft, and resulting past due



1 balance.

2 42. Through this conduct, Defendant violated: (i) 15 U.S.C. § 1692e by making  
3 false, deceptive, and misleading representations in connection with the  
4 collection of a debt; (ii) 15 U.S.C. § 1692e(2) by making false representations  
5 regarding the character, amount or legal status of a debt; (iii) 15 U.S.C. §  
6 1692e(10) by using false representations or deceptive means to collect or  
7 attempt to collect a debt; (iv) and 15 U.S.C. § 1692f by using unfair or  
8 unconscionable means to collect or attempt to collect a debt. These sections  
9 are incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus,  
10 Defendant also violated Cal. Civ. Code § 1788.17.

11 43. On June 23, 2015, Plaintiff faxed a letter to Defendant's Fraud and Identity  
12 Theft Department disputing the debt, the forged check, and again claiming  
13 and reporting to Defendant that he is the victim of identity theft. [See June 23,  
14 2015 Fax; Exhibit 5]. Plaintiff sent the fax to Defendant at (855) 749-0727,  
15 which was the number provided to Plaintiff by Defendant's Fraud and Identity  
16 Theft Department. That number has also been confirmed as belonging to  
17 "Wells Fargo Bank" by a licensed private investigator.

18 44. This faxed letter displays the full account number ending in -6940 and  
19 references the multiple fraud claims Plaintiff had lodged regarding the  
20 account. The letter also disputes the Forged Check stating, "The thief used my  
21 stolen ID, and the stolen and deactivated debit card to cash a check in Las  
22 Vegas."

23 45. Attached to the faxed letter was a printout of the forged check along with a  
24 copy of plaintiff's work time card, which Plaintiff and his manager signed.  
25 [See Exhibit 5]. The time card shows Plaintiff was working in El Cajon,  
26 California when Defendant cashed the forged check in Las Vegas, Nevada,  
27 which is over 300 miles away. Plaintiff even offered to have his employer  
28 contact Defendant to authenticate his time card.

- 1 46. Plaintiff also included as an attachment to the faxed letter, a specimen copy of  
2 his signature for Defendant to compare against the forged check.
- 3 47. Finally, the letter cites the police report Plaintiff filed listing the case number  
4 and investigating detective Michael Lane's contact phone number.
- 5 48. The June 23, 2015 faxed letter provided written notice to Defendant that a  
6 situation of identity theft might exist pursuant Cal. Civ. Code § 1798.93(c)(5).
- 7 49. Through the June 23, 2015 faxed letter, Plaintiff made a written claim to  
8 Defendant that he was the victim of identity theft which omitted information  
9 required by Cal. Civ. Code § 1788.18(a), namely a police report, and lacked a  
10 certification as required by Cal. Civ. Code § 1788.18(b)(3). Defendant did not  
11 provide written notice to Plaintiff of the additional information required under  
12 Cal. Civ. Code § 1788.18(a) or the certification required under Cal. Civ. Code  
13 § 1788.18(b)(3).
- 14 50. Through this conduct, Defendant violated Cal. Civ. Code § 1788.18(c) by  
15 failing to provide Plaintiff written notice of the additional information  
16 required under Cal. Civ. Code § 1788.18(a) or of the certification required  
17 under Cal. Civ. Code § 1788.18(b)(3).
- 18 51. On July 1, 2015, Plaintiff sent Defendant another letter by fax to Defendant's  
19 Fraud and Identity Theft Department at (855) 749-0727. [See July 1, 2015  
20 Fax; Exhibit 6].
- 21 52. The letter plainly states, "I am the victim of identity theft." The letter  
22 specifically references the bank account ending in -6940 and describes in  
23 detail the burglary, identity theft, and subsequent check forgery.
- 24 53. Moreover, the letter was properly certified by Plaintiff pursuant to Cal. Civ.  
25 Code § 1788.18(b)(3) and contained all information required by Cal. Civ.  
26 Code § 1788.18(a). Specifically included with the letter was: (i) the police  
27 report; (ii) a written statement that Plaintiff claims to be the victim of identity  
28 theft with respect to the specific debt being collected by the debt collector;

(iii) a written statement that certifies that the representations are true, correct, and contain no material omission of fact; (iv) a copy of Plaintiff's driver's license; (v) identification documentation that supports the statement of identity theft; (vi) specific facts supporting the claim of identity theft; (vii) an explanation showing that Plaintiff did not incur the debt; (viii) correspondence disputing the debt after the transaction information had been provided to Plaintiff; (ix) documentation of Plaintiff's residency; (x) a statement directing all further communications be made in writing; (xi) to the extending available, identification of any person whom Plaintiff believes incurred the debt; and (xi) an express statement that Plaintiff did not authorized the use of his name or personal information for incurring the debt.

54. Cal. Civ. Code § 1788.18(a) requires Defendant cease all collection activity after receiving the July 1, 2015 letter until an investigation is conducted pursuant to Cal. Civ. Code § 1788.18(d). Defendant did not commence any such review, nor did Defendant provide written notification of the results of any such review to Plaintiff prior to recommencing debt collection activities pursuant to Cal. Civ. Code § 1788.18(d).

55. On July 2, 2015 at 9:56 a.m., Defendant telephoned Plaintiff to collect upon the forged check and resulting overdraft debt.

56. Through this conduct, Defendant violated Cal. Civ. Code § 1788.18(a) by failing to cease all collection activities after receiving Plaintiff's July 1, 2015 letter; and/or Cal. Civ. Code § 1788.18(d) by failing to commence a review and/or by failing to provide Plaintiff written notification of the results of any such review prior to recommencing debt collection activities.

57. When Defendant contacts Plaintiff by telephone it uses an artificial and/or a prerecorded voice to announce that it will be monitoring and/or recording its phone calls with Plaintiff. After this artificial or prerecorded voice is played to the caller there is an audible click and the call is transferred to an actual

1 person.

2 58. Defendant therefore uses an “automatic telephone dialing system” (“ATDS”)  
3 as that term is defined by 47 U.S.C. § 227 (a)(1) and/or used an artificial or  
4 prerecorded voice as those terms are defined and used by 47 U.S.C. § 227  
5 (b)(1)(A).

6 59. The telephone call Defendant made on July 2, 2015 was made to Plaintiff’s  
7 cellular telephone ending in -3377. Plaintiff alleges on information and belief  
8 that Defendant used an “automatic telephone dialing system” (“ATDS”) as  
9 that term is defined by 47 U.S.C. § 227 (a)(1) and/or used an artificial or  
10 prerecorded voice as those terms are defined and used by 47 U.S.C. § 227  
11 (b)(1)(A) to place the July 2, 2015 call to Plaintiff.

12 60. The ATDS used for this call has the capacity to store or produce telephone  
13 numbers to be dialed using a random or sequential number generator.

14 61. The telephone number that Defendant, or its agents, called was assigned to a  
15 cellular telephone service for which Plaintiff incurs a charge for incoming  
16 calls pursuant to 47 U.S.C. § 227 (b)(1).

17 62. These telephone calls constituted calls that were not for emergency purposes  
18 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

19 63. Through Plaintiff’s July 1, 2015 faxed letter, described in paragraph 51 of this  
20 Complaint, Plaintiff revoked his consent to be contacted by Defendant by  
21 telephone stating, “Please don’t call me, if you need to get ahold of me use the  
22 address listed above.” [See Exhibit 6]. Through Plaintiff’s July 1, 2015 letter,  
23 Plaintiff revoked his consent to be contacted by telephone, including being  
24 contacted by telephone using an ATDS, prerecorded, or artificial voice, within  
25 the meaning of the TCPA, 47 U.S.C. § 227, *et seq.* Thus, the July 2, 2015 call  
26 was made without the prior express consent of Plaintiff.

27 64. Through this conduct, Defendant violated 47 U.S.C. § 227 (b)(1)(A) by  
28 making any call, other than a call made for emergency purposes or made with

1 the prior express consent of the called party, using an automatic telephone  
2 dialing system and/or an artificial or prerecorded voice.

3 65. On July 15, 2015, Defendant again contacted Plaintiff by mail in an attempt to  
4 collect upon the Forged Check and resulting alleged debt. [See July 15, 2015  
5 Debt Collection Letter; Exhibit 7].

6 66. This letter was sent from Defendant's "Overdraft Collections Department"  
7 and is signed by "Chad Spangler" who is employed as Defendant's  
8 "Collection Manager." The letter also plainly states Defendant is a debt  
9 collector as the bottom of the letter reads, "...this communication is an  
10 attempt to collect a debt and that information obtained will be used for that  
11 purpose." [See Exhibit 7].

12 67. The letter goes to state, "Your account is overdrawn" and "We are writing to  
13 let you know that your account ending in 6940 has been overdrawn by  
14 \$908.60 for 47 days."

15 68. The July 15, 2015 letter again attempts to collect upon a debt which resulted  
16 from the Forged Check and identity theft. Furthermore, the letter violates the  
17 identity theft cease and desist effected by Plaintiff's July 1, 2015 letter.

18 69. Through this conduct, Defendant violated Cal. Civ. Code § 1788.18(a) by  
19 failing to cease all collection activities after receiving Plaintiff's July 1, 2015  
20 letter; and/or Cal. Civ. Code § 1788.18(d), by failing to commence a review  
21 and/or by failing to provide Plaintiff written notification of the results of any  
22 such review prior to recommencing debt collection activities.

23 70. On July 29, 2015, Defendant again contacted Plaintiff by mail in an attempt to  
24 collect upon the Forged Check and resulting alleged debt. [See July 29, 2015  
25 Debt Collection Letter; Exhibit 8].

26 71. This letter was sent from Defendant's "Overdraft Deposit Collections and  
27 Recovery Department." This letter also states Defendant is a debt collector as  
28 the bottom of the letter reads, "...this communication is an attempt to collect a

1 debt and that information obtained will be used for that purpose.” [See Exhibit  
2 8].

3 72. The letter goes to state, “We have closed the above-referenced account  
4 because of its prolonged overdrawn status...” and “You can avoid **further**  
5 **collection action** by paying the total amount due of \$908.60...”

6 73. The July 29, 2015 letter again attempts to collect upon a debt which resulted  
7 from the Forged Check and identity theft. Furthermore, the letter violates the  
8 identity theft cease and desist effected by Plaintiff’s July 1, 2015 letter.

9 74. Through this conduct, Defendant violated Cal. Civ. Code § 1788.18(a) by  
10 failing to cease all collection activities after receiving Plaintiff’s July 1, 2015  
11 letter; and/or Cal. Civ. Code § 1788.18(d), by failing to commence a review  
12 and/or by failing to provide Plaintiff written notification of the results of any  
13 such review prior to recommencing debt collection activities.

14 75. In sum, Plaintiff has continually asserted that he is the victim of identity theft  
15 with regards to the alleged debt. Yet, Defendant has undertaken no  
16 investigation and continues to attempt to collect a debt fraudulently incurred  
17 though the theft of Plaintiff’s identity.

18 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF**  
19 **THE TELEPHONE CONSUMER PROTECTION ACT**  
20 **(“TCPA”) 47 U.S.C. § 227 ET SEQ.**

21 76. Plaintiff incorporates by reference all of the above paragraphs of this  
22 Complaint as though fully stated herein.

23 77. The foregoing acts and omissions of Defendant constitute numerous and  
24 multiple negligent violations of the TCPA, including but not limited to each  
25 and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

26 78. As a result of Defendant’s negligent violations of 47 U.S.C. § 227 *et seq.*,  
27 Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and  
28 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

1 79. Plaintiff is also entitled to, and seeks, injunctive relief prohibiting such  
2 conduct in the future.

3 **SECOND CAUSE OF ACTION FOR INTENTIONAL VIOLATIONS OF**  
4 **THE TELEPHONE CONSUMER PROTECTION ACT**  
5 **(“TCPA”) 47 U.S.C. § 227 ET SEQ.**

6 80. Plaintiff incorporates by reference all of the above paragraphs of this  
7 Complaint as though fully stated herein.

8 81. The foregoing acts and omissions of Defendant constitute numerous and  
9 multiple knowing and/or willful violations of the TCPA, including but not  
10 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227  
11 *et seq.*

12 82. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. §  
13 227 *et seq.*, Plaintiff is entitled to an award of \$1,500.00 in statutory damages,  
14 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

15 83. Plaintiff is also entitled to, and seeks, injunctive relief prohibiting such  
16 conduct in the future.

17 **THIRD CAUSE OF ACTION FOR VIOLATIONS OF**  
18 **THE CALIFORNIA IDENTITY THEFT LAW**  
19 **(“CITL”) CAL. CIV. CODE § 1798.93, ET SEQ.**

20 84. Plaintiff incorporates, by reference, all of the above paragraphs of this  
21 Complaint, as though fully stated herein.

22 85. The foregoing acts and omissions constitute numerous and multiple  
23 violations of the CITL.

24 86. Plaintiff brings this cause of action pursuant to Cal. Civ. § 1798.93. Plaintiff  
25 is the victim of identity theft in connection with the alleged claim of  
26 Defendant based upon an alleged debt resulting from identity theft.

27 87. Plaintiff has provided written notice to Defendant that a situation of identity  
28 theft may exist with respect to the alleged debt though his faxes send on June



23, 2015 and July 1, 2015. Defendant has failed to diligently investigate Plaintiff's notifications of identity theft. Defendant has also continued to pursue its alleged claim against Plaintiff after it was presented with the facts that entitle Plaintiff to a judgment pursuant to Cal. Civ. § 1798.93.

88. This conduct has caused plaintiff damages, including but not limited to, Defendant withdrawing funds from Plaintiff's bank account to cover the alleged "overdraft," the outstanding balance of the alleged debt, lost wages, and emotional distress.

89. As a result of each and every violation of the CITL, Plaintiff is entitled to actual damages pursuant to Cal. Civ. Code § 1798.93(a)(5); attorney's fees and costs pursuant to Cal. Civ. Code § 1798.93(c)(5); any equitable relief the court deems appropriate pursuant to Cal. Civ. Code § 1798.93(c)(5); and a civil penalty, in addition to any other damages, of up to \$30,000.00 pursuant to Cal. Civ. Code § 1798.93(c)(6).

90. In addition, plaintiff is entitled to a declaration that he is not obligated to Defendant on the claim under Cal. Civ. Code § 1798.93(c)(1); a declaration that any security interest or other interest Defendant purportedly obtained in the Plaintiff's property in connection with the claim is void and unenforceable, under Cal. Civ. Code § 1798.93(c)(2); an injunction retraining Defendant from collecting or attempting to collect on the claim, from enforcing or attempting to enforce any security interest or other interest in Plaintiff's property in connection with the claim, or from enforcing or executing on any judgment against Plaintiff on the claim under Cal. Civ. Code § 1798.93(c)(3); and the dismissal of any cause of action based on a claim, which arose because of identity theft under Cal. Civ. Code § 1798.93(c)(4).

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**FOURTH CAUSE OF ACTION FOR VIOLATIONS OF  
THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT  
("RFDCPA") CAL. CIV. CODE § 1788, ET SEQ.**

91. Plaintiff incorporates, by reference, all of the above paragraphs of this Complaint as though fully stated herein.

92. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

93. Cal. Civ. Code § 1788.17 incorporates the FDCPA (15 U.S.C. § 1692b through 1692j). Therefore, each of stated violations of the FDCPA also constitutes a violation of the RFDCPA (Cal. Civ. Code § 1788.17).

94. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for knowing or willful violations in the amount of up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney fees and costs pursuant to Cal. Civ. Code § 1788.30(c).

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant for:

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B);
- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C);
- Injunctive relief Pursuant to 47 U.S.C. § 227(b)(3)(A);
- An award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1788.30(a);
- An award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1798.93(c)(5);

- An award of any equitable relief the court deems appropriate, pursuant to Cal. Civ. Code § 1798.93(c)(5);
- An award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);
- A civil penalty of up to \$30,000.00, pursuant to Cal. Civ. Code § 1798.98(c)(5);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c);
- An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1798.93(c)(5);
- A declaration that Plaintiff is not obligated to Defendant on the claim pursuant to Cal. Civ. Code § 1798.93(c)(1);
- A declaration that any security interest, or other interest, Defendant purportedly obtained in Plaintiff's property, in connection with the claim, is void and unenforceable pursuant to Cal. Civ. Code § 1798.93(c)(2);
- An injunction retraining Defendant from collecting or attempting to collect on the claim, from enforcing or attempting to enforce any security interest or other interest in Plaintiff's property in connection with the claim, or from enforce or executing on any judgment against Plaintiff on the claim pursuant to Cal. Civ. Code § 1798.93(c)(3);
- The dismissal of any cause of action filed based on a claim, which arose as a result of identity theft pursuant to Cal. Civ. Code § 1798.93(c)(4);
- That the Court preliminarily and permanently enjoin Defendant from engaging in the unlawful debt collection practices stated herein.
- Any and all other relief that this Court deems just and proper.

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1 Dated: August 3, 2015

Respectfully submitted,

2 **SINNETT LAW, APC.**

3  
4 BY: /s/ WAYNE A. SINNETT

5 WAYNE A. SINNETT, ESQ.

6 ATTORNEY FOR PLAINTIFF

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8 **TRIAL BY JURY**

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10 95. Pursuant to the Seventh Amendment in the Constitution of the United States  
11 of America, Plaintiff is entitled to, and demands, a trial by jury.

12 Dated: August 3, 2015

Respectfully submitted,

14 **SINNETT LAW, APC.**

15  
16 BY: /s/ WAYNE A. SINNETT

17 WAYNE A. SINNETT, ESQ.

18 ATTORNEY FOR PLAINTIFF  
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